IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14520 of 1993

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARJUNJI RUPAJI VAGHELA - Petitioner(s)

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION - Respondent(s)

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Appearance :

MR MUKESH H RATHOD for Petitioner No(s).: 1.

MR YOGESH S LAKHANI for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 02/08/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the award of the Labour Court, Ahmedabad, passed in Reference LCA No.282 of 1990, whereby the respondent Corporation was directed to reinstate the petitioner without granting the benefit of continuity of service and back wages.

2.0 The brief facts of the case are that the petitioner herein is working as a Conductor with the respondent Corporation. On 27.06.1985 while the petitioner was on duty, the bus was checked by the Checking Squad of the respondent and the Squad found certain irregularities in the issuance of tickets by the petitioner. On the basis of the said charges, the petitioner was dismissed from the service on 29.01.1986. Against the said dismissal order, the petitioner filed two appeals and the same were rejected by the Appellate Authorities.

2.1 Being aggrieved by the said order, the petitioner raised a dispute, which, ultimately culminated into a reference before the Labour Court, Ahmedabad. The Labour Court, by impugned award, passed the aforesaid directions. By way of this petition, the petitioner has challenged the award of the Labour Court by which he was denied the benefits of continuity of service and back wages.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. From the impugned award, it appears that the Labour Court has proceeded on the premise that the charges leveled against him were

proved. Neither it has given any reasons nor has discussed the evidence on record and by merely referring to the charge and incident has arrived at the conclusion that the charges leveled against the petitioner were proved. Considering the period of service rendered by the petitioner and the fact that the amount involved in the said incident was only Rs.2.50, I am of the opinion that the benefit of continuity of service can be granted to the petitioner.

3.1 However, so far as the aspect of back wages is concerned, it may be noted that the petitioner had preferred the reference in question after a lapse of four years. No satisfactory explanation has been given by the petitioner to explain the said delay. In my opinion, the Labour Court was completely justified in denying him back wages.

3.2 In view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

3.3 In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award qua denying the petitioner back wages is required to be confirmed.

4.0 In above view of the matter, this petition is partly allowed. The impugned award of the Labour Court, Ahmedabad, qua denying the petitioner the benefit of continuity of service is quashed and set aside; and, the order qua denying him back wages is confirmed. The respondent Corporation is directed to give all the benefits of continuity of service to the petitioner within a period of three months from the receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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